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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/748,869	12/30/2003	Steve Hurson	NOBELB.163A	3711

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EXAMINER	
LEWIS, RALPH A	

ART UNIT	PAPER NUMBER
3732	

DATE MAILED: 12/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/748,869	HURSON	
	Examiner	Art Unit	
	Ralph A. Lewis	3732	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *10 October 2006*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,3-11 and 18-35* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,3-11 and 18-35* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *28 September 2005* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

Rejections based on 35 U.S.C. 112, second paragraph

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 7 and 9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 7, it is unclear if the "body portion" being referred to is the previously identified "implant body portion" or "cap body portion."

In claim 9, there is no antecedent basis for "the healing."

Obvious-type Double Patenting Rejections

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 12-17 and 30-34 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-5 of U.S. Patent No. 6,769,913 in view of Fradera (US 4,790,753) in view of Kumar et al (US 6,951,462). Although the conflicting claims are not identical, they are not patentably distinct from each other because the patented claims of '913 teach the use of an impression cap with injection port and vent holes and use of a syringe to inject impression material into the cap through the injection port. Merely, providing for a '913 patented cap/method for use with the prior art Fradera implant with prior art insertion means as taught by Kumar et al so that impressions may be made more accurately would have been obvious to one of ordinary skill in the art.

Rejections based on Prior Art

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3, 6, 7 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Fradera (US 4,790,753).

Fradera discloses a dental implant 1 having an integrally formed body portion 10 and abutment portion 13, 14. The abutment portion includes a flare portion 13, shoulder portion 24, and final restoration portion 14. The implant further includes a bore 16 having a notch 20 (internal threading) that is capable of receiving prongs on a mating

component. The Fadera implant further includes a cap 26 with internal cavity for fitting over final restoration portion 14 of the implant.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 8, 9 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fradera (US 4,790,753).

Fradera discloses a dental implant 1 having an integrally formed body portion 10 and abutment portion 13, 14. The abutment portion includes a flare portion 13, shoulder portion 24, and final restoration portion 14. The implant further includes a bore 16 having a notch 20 (internal threading) that is capable of receiving prongs on a mating component. The Fadera implant further includes a cap 25 with internal cavity for fitting over final restoration portion 14 of the implant. Fadera does not appear to disclose the color of cap 25 as required by claims 8 and 9; however, one of ordinary skill in the art would have found it readily obvious to make the cap of natural white tooth color for cosmetic reasons. In regard to claim 11, to have made the cap of an oval or more tooth shape for cosmetic reasons would also have been obvious to the ordinarily skilled artisan.

Claims 4, 5, 8, 9 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fradera (US 4,790,753) in view of Hurson (WO 01/85050).

In regard to claim 4, Hurson '050 teaches that it is desirable to extend the flange of the cap over the shoulder of the abutment in order to prevent gum tissue from near and above the shoulder region (note page 9, lines 22-33). To have extended the end of the Fradera cap 25 over the shoulder 24 in order to prevent the unwanted gum tissue growth as taught by Hurson would have been obvious to one of ordinary skill in the art. In regard to claims 8 and 9, Hurson teaches making the cap of a tooth color (page 7, lines 30 and 31).

Claims 18-27 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fradera (US 4,790,753) as applied above and in further view of Marlin (US 5,135,395) and Meiers et al (US 5,688,123).

Fradera fails to disclose a procedure for manufacturing a prosthesis for the implant disclosed. Marlin teaches the conventional manufacture of a prosthesis with a plastic coping that precisely fits over the abutment, encasing it in stone and then burning out the coupling leaving an opening in which the prosthesis is cast. To have provided a coping that precisely fits the Fradera abutment (e.g. one shaped like Meiers et al with "standoff" 5) and then using the coping to construct a prosthesis in a prior art investment cast technique as that disclosed by Marlin would have been obvious to one of ordinary skill in the art in desiring to construct a prosthesis for the Fradera implant.

Claims 28 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fradera (US 4,790,753) in view of Kumar et al (US 6,951,462)

Fradera fails to disclose how the implant 1 is maneuvered to the implant site and installed. Kumar teaches that it is desirable to provide an insertion tool 10 with prong 32 for engaging a notch 66 in the internal bore 60 of an implant 50 so that the implant can be easily handled and maneuvered into position in a sterile manner. To have provided a similar tool for the Fradera implant with prong for engaging the internal bore of the Fradera implant so that the implant can be easily positioned as taught by Kumar et al would have been obvious to one of ordinary skill in the art.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry concerning this communication should be directed to **Ralph Lewis** at telephone number **(571) 272-4712.** Fax (571) 273-8300. The examiner works a compressed work schedule and is unavailable every other Friday. The examiner's supervisor, Cris Rodriguez, can be reached at (571) 272-4964.

R.Lewis
December 11, 2006

Ralph A. Lewis
Primary Examiner
AU3732